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IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1944

No. 638-639

HUNTMAN STABILIZER CORPORATION,  
Petitioner,

v.

GENERAL MOTORS CORPORATION,  
Respondent.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT AND BRIEF IN SUPPORT THEREOF**

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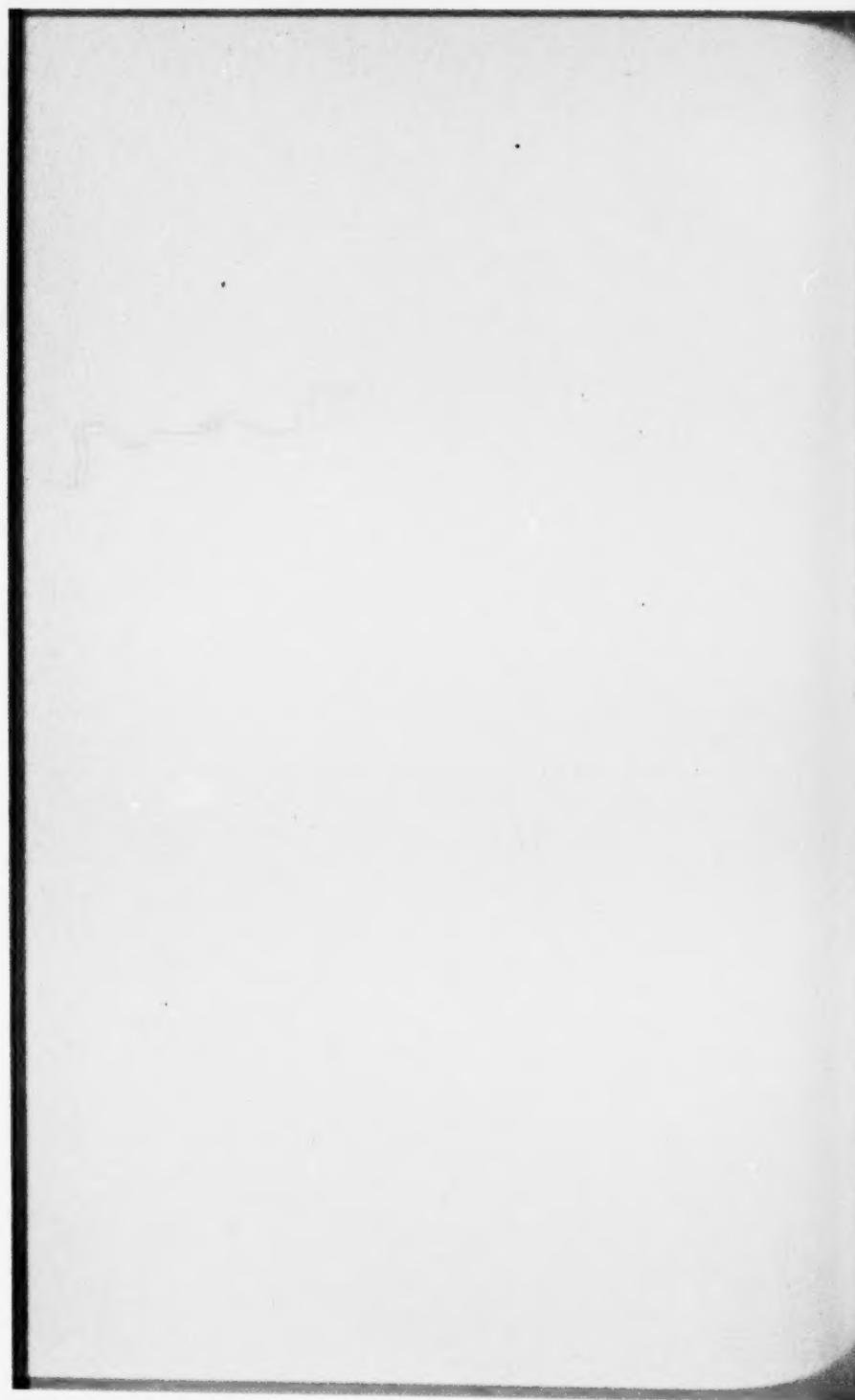
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IN THE  
**Supreme Court of the United States**

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OCTOBER TERM 1944

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HUNTMAN STABILIZER CORPORATION,  
Petitioner,  
v.

GENERAL MOTORS CORPORATION,  
Respondent.

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**PETITION FOR WRIT OF CERTIORARI**

**To the United States Circuit Court of Appeals for the  
Third Circuit.**

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATED JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, Huntman Stabilizer Corporation, respectfully prays for a Writ of Certiorari to the Circuit Court of Appeals for the Third Circuit, to review Judgments in that court entered August 31, 1944. A transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith in accordance with Rule 38 of the Rules of this Court.

**Summary and Short Statement of the Matter  
Involved**

This action was brought by Huntman Stabilizer Corporation in the District Court of the United States for the

District of New Jersey to enjoin the infringement of claims 1, 2, 3 and 4 of Letters Patent No. 1,971,957 for Stabilizing Shock-Absorbing Apparatus for Motor Vehicles; claims 1 and 2 of Letters Patent No. 1,971,958 for Method of Stabilizing Automobiles While in Motion; claims 1 and 2 of Letters Patent No. 1,971,959 for Equalizing and Shock-Absorbing Means for Vehicles, and claim 6 of Letters Patent No. 1,971,960 for Combined Cross-bar Equalizing and Shock-Absorbing Means for Vehicles.

Three forms of infringement were in evidence known as "Oldsmobile", "Chevrolet" and "Buick". The District Court (Hon. James Alger Fee) held the claims of the above patents in suit valid and infringed by the "Oldsmobile", but found the evidence insufficient in the "Chevrolet" and "Buick" forms to prove infringement, but that infringement might be shown by further evidence (Reported in 53 Fed. Supp. 43).

An appeal was taken by respondent to the United States Circuit Court of Appeals for the Third Circuit from the judgment of the District Court holding the patents valid and infringed by "Oldsmobile" and a cross appeal was taken by petitioner from the judgment holding the evidence insufficient to prove infringement by "Buick" and "Chevrolet". The Circuit Court reversed the judgment of the District Court on respondent's appeal and affirmed the judgment on petitioner's appeal. The opinion of the District Court and the Findings of Fact and Conclusions of Law are found in the Record at pages 274, 284. The opinion of the Circuit Court will be found in the Record at page 585.

All of the patents in suit relate to the combination of a pair of recoil check, or snubber, shock absorbers, one on each side of a motor vehicle between the chassis and the axle, and a connecting means between the shock absorbers constraining them to act together so that the shocks and recoils, due to the vehicle traveling at high

speeds, are distributed between them. Combining the shock absorbers enabled lighter, softer, springs to be used without sacrificing the stability of the vehicle and improved its riding qualities.

The claims of the first two patents in issue define the connecting means broadly (Exhibits P1, P2, Record opposite pp. 56a, 57a). The opinion of the Court of Appeals held these patents valid as a combination but restricted these claims on baseless assumptions contrary to findings of fact of the District Court which were fully supported by undisputed evidence and in which no error has been shown; has decided important questions of federal law which have not been, but should be, decided by this Court, and has decided federal questions in a way probably in conflict with applicable decisions of this Court.

The last two patents define specific embodiments of the broad combination (Exhibits P3, P4, Record opposite pp. 60a, 62a). The opinion of the Circuit Court held the last two patents invalid, contrary to the District Court's findings of fact in which no error has been shown and to undisputed evidence; and decided important federal questions in a way probably in conflict with applicable decisions of this Court. The Circuit Court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Huntman patent 1,971,957 describes the generic combination of recoil check shock absorbers and connecting means and, as an exemplification, shows hydraulic connections in which the fluid compartments of the shock absorbers on opposite sides of the car are cross connected by tubes or pipes. The claims in issue (claim 3, for example), claim the combination of recoil check shock absorbers and a connecting means. Other claims not in issue (claim 20, for example), are specific to the hydraulic connections.

Patent 1,971,958 has the same disclosures as patent 1,971,957 but the claims are method claims independent of specific mechanism.

Patent 1,971,959 discloses recoil check shock absorbers or snubbers on opposite sides of the car connected to the axle and through the axle connected by links to arms at the ends of a transverse rock shaft or rod mounted on the body or chassis. The rod thus connects one shock absorber directly with the other and distributes or divides the shock or recoil. The claims in issue (claims 1 and 2) are specific to the cross-bar connection.

Respondent's attorneys conceded that these patents all operate on the same principle (Record, p. 48a).

Patent 1,971,960 shows a transverse shaft or bar connected at its ends to hydraulic, recoil check, shock absorbers on opposite sides of the vehicle. The single claim in issue (claim 6) is specific to the hydraulic shock absorbers and the connecting bar.

All the patents issued on the same day.

The inventor, Huntman, made the first embodiment of his invention in the Spring of 1923 (Record, p. 486) by placing on a small Durant car a cross-bar having two arms, one at each end, and a linkage connecting each arm to the axle and then installing on the car two Watson shock absorbers and attaching their straps to the same points on the axle to which the links were connected. The Watson was a snubber or recoil check shock absorber. This construction was that shown in the third patent, 1,971,959.

In January 1924, Huntman mounted on the rear of a Flint car a pair of Houdaille hydraulic shock absorbers and connected them by a cross-bar having sockets on its opposite ends engaging the shafts of the shock absorbers, as shown in the fourth patent 1,971,960 (Record, p. 488).



This construction could not be installed on the front end of the car because the lower part, or pan, of the engine would be in the way of the cross-bar. Huntman, late in the Summer of 1924, overcame this obstacle by an hydraulic connection in which the fluid compartments of the shock absorbers on opposite sides of the car were cross connected by tubes or pipes as shown in the first two patents 1,971,957 and 1,971,958 (Record, p. 490).

The car with these connections between the shock absorbers was demonstrated to an engineer in respondent company on whose advice a model was sent to respondent for testing (Record, p. 492). Respondent, in November 1925, reported that this model did not come up to the expectations of its engineers who compared it with devices that respondent was developing for future use (Exhibit P-16, Record, p. 64a). Huntman then tried to put his inventions on the market as shown by the testimony, and filed additional patent applications showing the prior embodiments of the invention (Record, p. 500).

Late in 1933 respondent announced the adoption of the Oldsmobile type of shock absorber connection and Huntman's patent attorney immediately notified respondent of Huntman's patent applications, and of respondent's infringement thereof, and offered a license. Further efforts were made through Henry Herbermann, counsel for petitioner, but terminated when Mr. Herbermann joined the legal staff of respondent (Record, pp. 501-502).

The Oldsmobile construction has a cross-bar connected at its ends by bolts to hydraulic recoil check shock absorbers and is, therefore, substantially identical with the Huntman construction shown in patent 1,971,960 (Stipulation Record, pp. 6a, 7a, and Exhibit P-8, Record, p. 83a).

The Chevrolet and Buick were later constructions employing a cross-bar having arms at its ends connected to the axle or wheel carrying elements to which hydraulic re-

coil check shock absorbers are connected as in Huntman's earliest construction shown in patent 1,971,959. (Stipulation, pp. 7a, 8a and Exhibits P-9, P-10, Record, pp. 85a, 87a.)

Respondent installed these mechanisms on over six million of its cars, four and one-half million being installed since February 1, 1938 to the date of the suit (Record, pp. 324, 325). They are a valuable feature of passenger automobiles.

Proof of the infringing acts was by stipulation comprising diagrammatic charts and descriptions. The Oldsmobile shock absorbers and the connecting rod bolted thereto were also in evidence as a part of the stipulation. Only the connecting rods and links of the Chevrolet and the Buick were in evidence:—it would have required the chassis and running gear to show their connection to the shock absorbers. There was, however, other evidence that showed the construction of Chevrolet and of Buick complete in every detail.

Among the prior art, respondent's evidence was primarily directed to a linkage known as the "Adex" between the chassis or sills of the body and the axle as shown in "La Vie Automobile" of November 24, 1922 (Record, p. 559). A model was demonstrated by respondent to show that this linkage would give the vehicle a stabilizing effect, equal to, or greater than, that obtained by a transverse torsion rod or shaft such as that used in the accused mechanisms. It was admitted by respondent's witness that this effect was obtained indirectly by the action of the linkage on the springs, giving the springs a resistance to unequal flexing without otherwise stiffening them (Record, p. 44a). If shock absorbers were used on a vehicle having the Adex linkage the same end might be obtained indirectly as was obtained by the Huntman connection of the two shock absorbers.

None of the prior art showed the combination of shock absorbers and connecting means. A patent to Ezell 260,960 of 1882 (Record, p. 366), which showed no shock absorbers, was mentioned by the District Court (Record, p. 278) as being otherwise the closest approach to cross-bar stabilization.

The District Court found (Record, p. 285, par. 4) that Huntman had experimented as early as 1923 with a bar connected to the shock absorbers, a fact fully supported by the evidence; that patents 1,971,957 and 1,971,958 were not limited to the form exemplified therein but covered all direct connections of the shock absorbers (Record, p. 286, par. 11), (but not indirect means as in the Adex); that all of the patents in issue herein were valid and were infringed by the Oldsmobile (Record, p. 286, par. 13) but, referring solely to the stipulations, that the evidence was insufficient to prove infringement by Buick and Chevrolet and that infringement might be shown by further evidence (Record, pp. 283, 287, par. 14).

The opinion of the Circuit Court held patents 1,971,957 and 1,971,958 valid, therefore not an aggregation, but limited them to the exemplified hydraulic connection on the following grounds:

1. That the shock absorbers interconnected hydraulically by the cross tubes was the device that Huntman first installed upon a car (Record, p. 589). This is directly contrary to the finding of the District Court based on undisputed evidence taken in open court that Huntman first installed the cross bar connection early in 1923. There is no evidence in support of the Circuit Court's opinion nor does it point out any error in the District Court's findings. If this action of the Circuit Court is the accepted and usual course of judicial proceedings, Rule 52a of the Rules of Civil Procedure is meaningless. The fact of this early installation is material to the scope of the patent:

*Morey v. Lockwood*, 75 U. S. 230, 242.

2. That these patents disappear from the picture unless the claims therein support the granting of the two subsequent patents as part of the field preempted by the application for patent 1,971,957 (Record, p. 589). This manner of disposing of the question of infringement, or any question involved in this case, is clearly without precedent and without basis in the statutes or decisions of this court. The granting of subsequent patents is in no way dependent on the scope of claims in an earlier patent nor on the field covered by the claims of an earlier patent. The claim measures the invention of the patent, *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405, 419. Whether a subsequent patent, or patents, comes within its scope is immaterial to the validity of either.

3. That the claims of these patents encompass every equalizing mechanism for stabilizing wheeled running gear and equalizing vertical displacing shock on one side with the other; that the claims monopolize for the patentee the entire field of the problem, and that to allow patentee now to claim every means for equalizing the strain on both sides of vehicles would allow him to extend his invention to include the prior art (Record, p. 591). This is contrary to the evidence and to the findings of the District Court. The "Adex" linkage was shown by respondent's testimony and model to accomplish equal or greater stability by its reaction on the springs without connecting the shock absorbers. The District Court found that the claims of patents 1,971,957 and 1,971,958 do not include this indirect effect of the "Adex" linkage. The Circuit Court has shown no error in this finding. The claims of these patents cover the *combination* of recoil check shock absorbers *specifically* and a connecting means *generally*. They do not, in terms or in effect, cover *every* equalizing means and stabilizing means.

4. That what the patentee really has offered is an hydraulically connected shock absorbing combination (Rec-

ord, p. 591). This is tantamount to saying that the patentee must be limited to the specific exemplifications of his patent specifications even though, as found by the District Court he had made other embodiments. This is in conflict with applicable decisions of this Court:

*Mowry v. Whitney*, 81 U. S. 620;

*Keystone v. Adams*, 151 U. S. 139;

*Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405;

*Hildredth v. Mastoras*, 257 U. S. 27;

*Smith v. Snow*, 294 U. S. 1, 14.

5. That the claims are so broad as to prevent future possible inventions (Record, p. 591). This is error, for as found by the District Court the claims of these patents cover broadly only the means for connecting the shock absorbers and do not cover all stabilizing means such as the "Adex". If other means should be invented for accomplishing the same end or result they would be outside the scope of these claims. The Circuit Court's statement is in probable conflict with applicable decisions of this Court which hold that in determining whether an invention has been anticipated by an earlier patent, the question is not what is the precise scope of the claims in the earlier patent, but what is disclosed in the specification and made known to the world:

*Minerals Separation N. A. Corp. v. Magma Copper Co.*, 280 U. S. 400, 402.

6. That the problem Huntman worked on was one common to motor car manufacturers which they were endeavoring to solve. As a ground for limiting the scope of claims this is in conflict with long established precedents. Invention does not lie in the perception of an end to be accomplished or of a want to be satisfied. The creative act of invention lies solely in the idea of a means to ac-

comply with the end or satisfy the want—*Robinson on Patents*, Vol. 1, page 133. The existence of the end or want to be satisfied and the desire and unsuccessful efforts of others to satisfy it in no way limit or anticipate the idea of means of a successful inventor.

On these grounds alone the Circuit Court held these patents not infringed.

In restricting the claims in issue to hydraulic connections, the Circuit Court has made them the same in scope and substance as other more limited claims of the patent and has, in effect, rewritten the patent contract. This is in conflict with applicable decisions of this Court.

*Smith v. Snow*, 294 U. S. 1, 13, 14;

*Symington v. National Malleable Castings Co.*,  
250 U. S. 383, 385.

The Circuit Court's opinion held patents 1,971,959 and 1,971,960 invalid on the following grounds:

1. Because they were not applied for until after respondent had announced the appearance of the accused structures. But this announcement was within two years of the filing date of the patents and was later than Huntman's dates of invention, which the evidence showed and the District Court found, to be in 1923 and 1924, and does not constitute an anticipation under the statutes, R. S. 4886. U. S. Code title 35, sec. 31.

2. That they cannot be sustained unless they are to be classed as further embodiments of patent 1,971,957. As a ground for invalidating a patent this is without basis in the statutes or in any decision of this Court. That a patent cannot be sustained unless it be an embodiment of another patent raises an important question of federal law which has not been, but should be, settled by this Court.

3. That these patents are anticipated by a patent to Goyne 1,568,561, January 5, 1926 (Record, p. 370). This is

purely a question of fact. The District Court did not find this patent to be an anticipation. It discloses merely a rotatable rock shaft having leaf springs or spring arms secured thereon at the opposite ends and extending into and tightly fitting a recess on the axle so that there can be no relative movement of the axle and body, or chassis, without flexing these spring arms. If shock absorbers were mounted in any manner that would permit the functioning of the Goyne device they would not be connected as in the Huntman patents.

The Circuit Court's decision on petitioner's appeal was based on its restriction of the scope of the first two patents to hydraulic connections and its finding of invalidity of the last two. Unless it is sustained on these findings it has not decided the question of the sufficiency of the proofs as to Buick and Chevrolet. If not sustained on these findings, petitioner will have been denied the right to an appeal and unless a finding of infringement or non-infringement were made on the evidence it would mean that no documentary and oral evidence, no matter how complete, short of the production of the infringing machines or apparatus in court, would be sufficient proof of infringement.

Petitioner's contentions may be briefly summarized as follows:

1. The Opinion of the Circuit Court in reversing without any supporting evidence or showing of error a finding of fact of the District Court based on adequate, undisputed, evidence is such a departure from rule 52a of the Rules of Civil Procedure as to call for an exercise of this Court's power of supervision.

2. The opinion of the Circuit Court in restricting the claims of patents 1,971,957 and 1,971,958 is in conflict with applicable decisions of this Court as to each of the several grounds of the opinion.

3. The opinion of the Circuit Court in holding patents 1,971,959 and 1,971,960 invalid is in probable conflict with applicable decisions of this Court and, as to certain grounds, without any basis in the statutes.

4. The Circuit Court has made no decision on the question of the sufficiency of evidence of infringement by Buick and Chevrolet raised by petitioner's appeal.

5. The inventions are of great importance to the automotive industry and a decision on the scope and validity of the patents in issue based on the established precedents of this Court would be desirable.

6. Patents 1,971,957 and 1,971,958 disclosed the shock absorber connecting means broadly as claimed and not merely the hydraulic connections exemplified.

### **Jurisdiction**

This is a suit arising under the Patent Laws of the United States, Judicial Code, Section 24 (7), 28 U. S. C., Sec. 41.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1924 (28 U. S. C., Sec. 347).

The Judgments your petitioner seeks to have reviewed are dated August 31, 1944, the date of entry of the Judgments in the Circuit Court of Appeals.

The Mandate has been stayed by Order of the Circuit Court of Appeals to permit the filing of this petition for Writ of Certiorari.

### **Questions Involved**

(1) Are the Huntman patents 1,971,957; 1,971,958; 1,971,959 and 1,971,960 valid and infringed by the accused mechanisms?



(2) Did the Court of Appeals, in adjudging the claims in issue of patents 1,971,957 and 1,971,958 limited to the hydraulic connections exemplified in the patents and defined in more specific claims in patent 1,971,957, misinterpret and misapply the principles governing invention and the rights of patentees as announced by this Court in the cases of:

*Keystone v. Adams*, 151 U. S. 139;  
*Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405;  
*Hildreth v. Mastoras*, 257 U. S. 27;  
*Smith v. Snow*, 294 U. S. 1, 14.

3. Was the judgment of the Circuit Court, holding patents 1,971,959 and 1,971,960 invalid, without basis in fact and law?

4. Did the Circuit Court in reversing the District Court on material questions of fact fully supported by undisputed evidence taken in open court and without showing any error therein so far depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision?

Your petitioner submits that these questions should all be answered in the affirmative; and respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Third Circuit commanding such Court to certify and send to this Court, on a date to be designated, a full transcript of the Record and all proceedings of the Court of Appeals had in this case; to the end that this case may be reviewed and determined by this Court; that the judgments of the Court of Appeals be reversed; and that your petitioner be granted such other and further relief as may seem proper.

### **Reasons Relied On For the Allowance of the Writ**

1. The Circuit Court for the Third Circuit in reversing the findings of fact of the District Court fully supported by undisputed evidence taken in open court and without any showing of error in the findings or of insufficiency in the evidence, has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

2. The Circuit Court in basing its decision on a conclusion of material fact in direct conflict with the evidence and with no evidence in support of its conclusion has made a patently erroneous judgment for which there is no remedy other than by a review by this Court.

3. The Circuit Court has decided important questions of federal law in a way probably in conflict with applicable decisions of this Court and which should, therefore, be reviewed by this Court.

4. Valuable patent rights of petitioner have been impaired or destroyed by the decision of the Circuit Court on the basis of erroneous assumptions and conclusions of law and fact. It is of public interest that valid patents shall not be impaired or nullified by such decisions. Public interest is concerned not only with the suppression of unwarranted assertions of patent rights, but also with protecting the just rights of inventors and patentees as well as other property against wrongful appropriation.

Wherefore your petitioner respectfully prays for an allowance of a Writ of Certiorari.

Respectfully submitted,

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM 1944

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No. ....  
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HUNTMAN STABILIZER CORPORATION,  
*v.* Petitioner,

GENERAL MOTORS CORPORATION,  
Respondent.  
\_\_\_\_\_

**BRIEF IN SUPPORT OF PETITION**  
\_\_\_\_\_

**The Opinions of the Courts Below**

The opinion of the District Court appears at page 274 of the Record and is reported in 53 Fed. Supp. 43; and the opinion of the Circuit Court appears at page 585 of the Record and has not yet been reported.

The judgments of the Circuit Court of Appeals were entered August 31, 1944.

**Jurisdiction**

Jurisdiction is invoked under Judicial Code, Section 24 (7), 28 U. S. C., Sec. 41; under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1924 (28 U. S. C., Sec. 347).

### Statement of the Case

In limiting the claims in issue of patents Nos. 1,971,957 and 1,971,958 to the specific hydraulic connecting tubes exemplified in the specification and drawings, the Circuit Court gave as the principal reason that, unless so limited, these claims would monopolize for the patentee the entire field of the problem (Record, p. 591). This is contrary to fact and to the evidence.

The problem to which these patents are directed is to equalize or balance shocks and to prevent the body from rolling sidewise in going around curves. The patentee solved this problem in *one* way by connecting the recoil shock absorbers on opposite sides of the car, and the broadest claims are limited to this combination. In this combination the connecting means may be the cross tubes exemplified in the first two patents, or the cross bar of the third patent. Both forms embody the same principle. This is proved by the evidence and respondent's attorneys so admitted, R. 48a. The broad patent claims do not cover *other* means for solving this problem, and there *are* other means. Respondent's witness, Hunt, testified that substantially the same stabilizing effect could be obtained by linkages of the "Farman", "Van den Dries" and "Adex" type and demonstrated by means of a model the effect of the "Adex" linkage in comparison with the cross bar (Record p. 222). He conceded that this effect was due to the action of the linkage on the springs (Record p. 253). The District Court found that the action of this linkage was indirect and was not a physical connection of the shock absorbers and, therefore, outside the scope of the broad claims (Record p. 287). In *its* judgments the Circuit Court ignored this evidence and the findings of fact of the District Court based thereon. It also ignored the evidence and findings of fact of the District Court that the patentee invented the cross car connection before the

more complex hydraulic or cross tube connection (Record p. 285, paragraph 4). The findings of fact of the District Court, who saw the witnesses testify, is unassailable. *Adamson v. Gilliland*, 242 U. S., 350, 353. They are not to be ignored but should be given effect. *DeForest Radio Co. v. General Electric Co.*, 283 U. S., 664, 685.

The Circuit Court did not find any error in the findings of the District Court but merely stated an arbitrary conclusion directly opposed to the evidence and to the findings of the District Court and without any foundation in fact, and used this conclusion as the premise for its judgment. If this judgment of the Circuit Court is permitted to stand it would be an example of the futility of evidence, of findings of fact by the District Court, and of the Rules of Civil Procedure. It is of great public interest to know whether the judgment shall stand with the tacit or express approval of this Court. If it is to stand as a precedent, any Circuit Court of Appeals may, upon arbitrary assumptions, unsupported by, or contrary to, the evidence, reach judgments affecting patent or other property rights of any individual. Reliance on accepted standards of judicial procedure would be impaired if not destroyed.

Nor has the Circuit Court pointed to any error in the District Court's conclusions of law. It has ignored the District Court's conclusions and set forth conclusions in conflict with applicable decisions of this Court. One conclusion is that a patentee may not have the exclusive right in the idea of means that he has invented but must be limited to a form of embodiment exemplified in the specification of the patent leaving alternative or equivalent forms of embodiment open for appropriation by others even though they are included in the terms of the broad claims. This is in effect a nullification of the patent law for it would permit evasion by the simple expedient of using an equivalent form of embodiment. Under this de-

cision no patent would be valid unless worthless. The decision is in probable conflict with applicable decisions of this Court:

*Smith v. Snow*, 294 U. S. 1, 14;

*Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405, 418, 419, 423, 424;

*Hildreth v. Mastoras*, 257 U. S. 27;

*Keystone v. Adams*, 151 U. S. 139, 145.

Another erroneous conclusion of law set forth by the Circuit Court for restricting the scope of the claims of the first two patents is that the problem the patentee worked on was a common one to motor car manufacturers: that the various devices and publications of the prior art show how the various manufacturers were endeavoring to meet the problem. But the problem was to provide stability and easy riding *not* to embody the idea of physically connecting recoil check shock absorbers. The endeavors referred to were linkages such as that of "Adex", or supplementary springs such as those of Goynes. The Circuit Court did not find any suggestion of the idea of connecting the shock absorbers or any problem in connecting them. The field of invention outside of Huntman's invention has not been restricted by the claims in issue. The decision of the Circuit Court is in conflict with applicable decisions of this Court, which hold that the unsuccessful efforts of others to solve the problem is evidence of invention and not a ground for restricting an inventor to a specific embodiment of a broadly novel idea of means.

*Hobbs v. Beach*, 180 U. S. 383, 392;

*Expanded Metal Co. v. Bradford*, 214 U. S. 366, 381.

Among the reasons in the Circuit Court's decision for holding the two later patents, 1,971,959 and 1,971,960, in-



valid is that they cannot be sustained unless they are to be classed as further embodiments of the earlier application (sic) 1,971,957 (Record, pp. 592-593). They are embodiments of the broad idea of that patent of *recoil check* shock absorbers and a connecting means. But even if they were not, this would not be any ground of invalidity.

Another reason advanced as conclusive against these patents is that they were not applied for until after the respondent had announced the appearance of the accused structures (Record, p. 592). This is not given as an anticipation nor could it be since the patentee had made the invention several years prior to the announcement, as found by the District Court, and filed the applications for those patents only a few months after this announcement and well within the two year statutory period. Under this holding of the Circuit Court it would logically follow that if an inventor discloses his invention to a manufacturer and the manufacturer publicly announces his adoption of the invention before the inventor files his application, the patent is invalidated or infringement is excused. This is a novel and important question of federal law which has not been, but should be, settled by this Court.

The Circuit Court also held these two patents anticipated by a patent to Goyne which showed spring devices and a connecting rod for absorbing and distributing shocks (Record, p. 592). But this conclusion, contrary to the findings of the District Court, is based upon misconstruction of the facts and law pointed out above. It concluded that because Goyne was seeking a way to the same end as the patentee, Huntman, the means were the same. This is no basis for anticipation.

The Circuit Court made no decision on the specific question raised in Petitioner's appeal as to the sufficiency of evidence of infringement by Buick and Chevrolet, basing its denial of this appeal on the narrowed scope of the first two patents and its finding of invalidity of the last two

patents. If it is in error on the above grounds the questions raised by Petitioner's appeal should be decided.

The conflict of the Circuit Court's decision with undisputed evidence in the case and with the findings of fact and conclusions of law of the District Court without assigning reasons therefor is not the usual and accepted course of judicial proceedings as set forth in the Federal Rules of Civil Procedure nor the procedure in law or equity courts.

## ARGUMENT

### Point 1

The Circuit Court of Appeals for the Third Circuit in restricting claims in issue of patents 1,971,957 and 1,971,958 and in holding the claims in issue of patents 1,971,959 and 1,971,960 invalid contrary to the evidence and to the District Court's findings of fact and without any showing of error therein, has so far departed from the accepted and usual course of judicial proceedings as set forth in Rule 52a of the Rules of Civil Procedure as to call for an exercise of this Court's power of supervision. *E. H. Ferree Co. v. United Shoe Machinery Co.*, 209 U. S. 614, 290 U. S. 708. The question concerning Rule 52a is of great public importance:

*Halliday v. United States*, 315 U. S. 94;  
*Berry v. United States*, 312 U. S. 450;  
*Conway v. O'Brien*, 312 U. S. 492.

In *Conway v. O'Brien* the Supreme Court said "We granted certiorari to examine whether there had been sufficient compliance with Rule 50(b) to authorize dismissal of the complaint". In the present case compliance with Rule 52a is in question. It is of similar public importance.

## Point 2

The Circuit Court of Appeals for the Third Circuit in restricting the claims in issue to the specific exemplification in the specification and drawings and to the scope of other more limited claims has decided important federal questions in a way probably in conflict with applicable decisions of this Court and more particularly,

*Mowry v. Whitney*, 81 U. S. 620;

*Keystone v. Adams*, 151 U. S. 139;

*Hobbs v. Beach*, 180 U. S. 383;

*Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405;

*Expanded Metal Co. v. Bradford*, 214 U. S. 366;

*Smith v. Snow*, 294 U. S. 1, 4.

It is of public importance that basic principles of patent law established by the decisions of this Court be followed by the circuit courts of appeal and that decisions of the circuit courts shall not establish precedents in conflict therewith and that confusion and uncertainty in the law should be avoided.

## Point 3

The Circuit Court for the Third Circuit has decided important questions of federal law which have not been, but should be, settled by this Court. In holding the last two patents invalid on the ground that they were not embodiments of the earlier filed patent and because they were filed after Respondent's announcement of the appearance of the accused structures, though this announcement was later than the patentee's invention and within the two year statutory period, the Circuit Court has raised questions which have not been decided by this Court. Questions, of general application, affecting the validity of patents should be decided by this Court, particularly where no foundation in the statutes nor in equity is given for the opinion of the Circuit Court.

**Point 4**

If upon review by this Court the scope and validity of the claims are sustained, the question of the sufficiency of proof of infringement by the Buick and Chevrolet structures is in question. In the evidence, apparently not considered by the courts below, are complete factory drawings and shop manuals showing and describing these structures in detail. To require in addition the production and demonstration of infringing mechanism as necessary to complete proof would be impractical as a general rule in patent cases because of size and bulk.

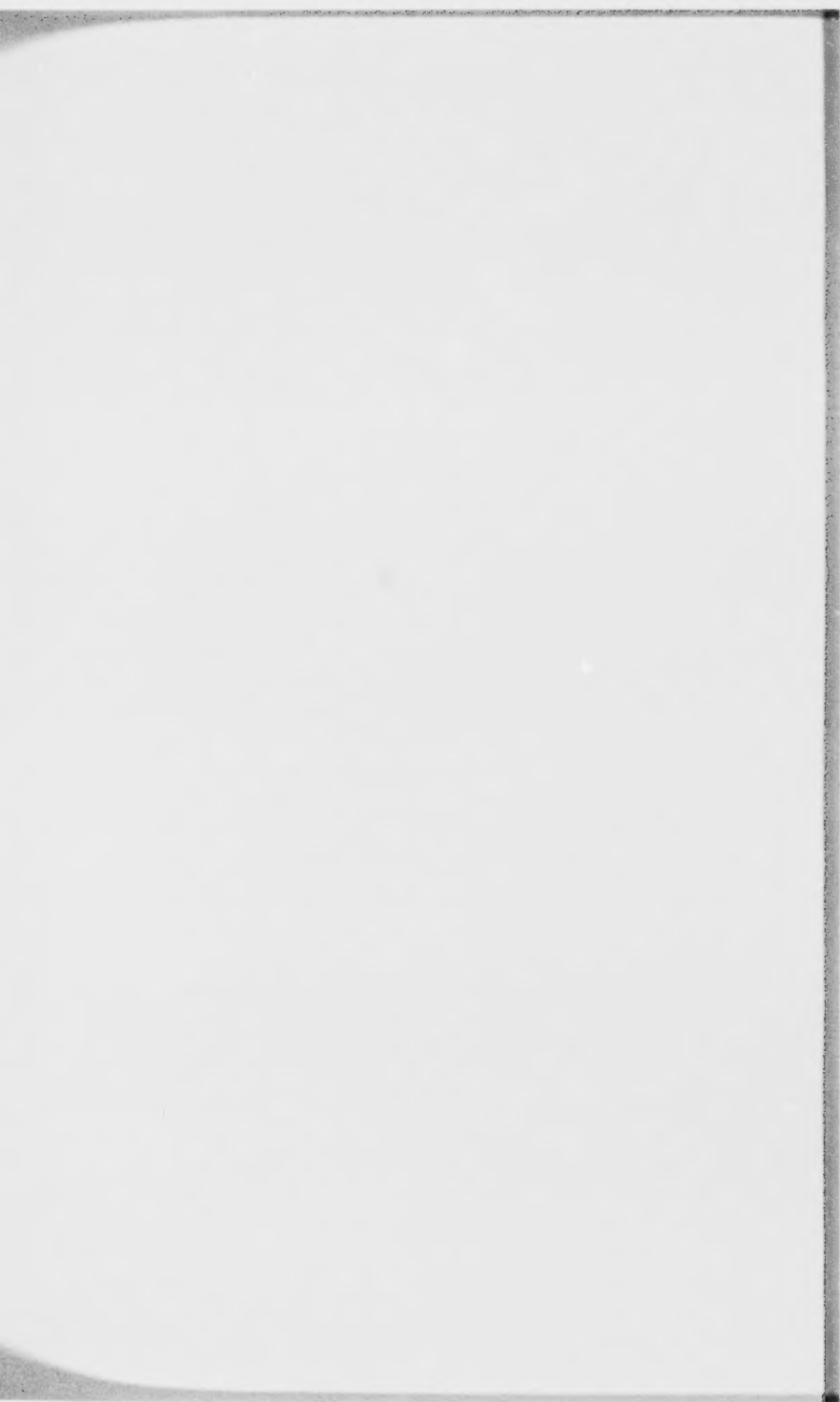
The above points relate to material questions on which the Circuit Court has based its judgments.

WHEREFORE your Petitioner earnestly prays that the Petition for Writ of Certiorari be granted, the cause reviewed, and the Judgments of the Circuit Court of Appeals for the Third Circuit reversed.

Respectfully submitted,

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CHARLES ELMORE DROPLEY  
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1944

Nos. 638 and 639

HUNTMAN STABILIZER CORPORATION,  
*Petitioner,*

*vs.*

GENERAL MOTORS CORPORATION,  
*Respondent.*

## BRIEF FOR RESPONDENT

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IN THE  
**Supreme Court of the United States,**  
October Term, 1944  
Nos. 638 and 639

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HUNTMAN STABILIZER CORPORATION,  
*Petitioner,*  
*vs.*

GENERAL MOTORS CORPORATION,  
*Respondent.*

---

**BRIEF FOR RESPONDENT**

**Statement**

In this patent suit, the four patents all issued on August 28, 1934. The construction attacked comprises, in an automobile, the use of an equalizing bar extending from side to side of the automobile, with shock absorbers provided on either side. The Court of Appeals held the first two patents limited in scope and not infringed, and the second pair anticipated by the prior art and invalid (Rec. 593).

On December 21, 1933 plaintiff knew what some of defendant's structures were (Rec. 125); by January 22, 1934 Huntman knew what the constructions of *all* of defendant's cars were (Rec. 131); the correspondence shows that plaintiff continued to consider defendant's constructions down to the bringing of suit (Rec. 125-160). On August 28, 1934 the four patents in suit issued (following Rec. 56a *et seq.*) and consequently plaintiff's cause of action arose at that time. Plaintiff did not bring suit until May 5, 1941 (Rec.

1a) which was more than six and a half years later and during which time defendant had sold nearly six and a half million automobiles containing the devices charged to infringe, and had spent many millions of dollars advertising them (Rec. 321).

Petitioner's statements with respect to the basis of the opinion of the Circuit Court of Appeals for the Third Circuit are not correct, so this brief will largely be directed to pointing out these errors.

## ARGUMENT

### BASIS OF OPINION OF CIRCUIT COURT OF APPEALS WITH RESPECT TO NON-INFRINGEMENT OF PATENTS NOS. 1,971,957 AND 1,971,958

The Court of Appeals limited the claims of patents Nos. 1,971,957 and 1,971,958 in issue to hydraulically cross connected shock absorbers (i.e., shock absorbers filled with oil and connected by pipes through which the oil is caused to flow) and so not infringed by defendant's mechanical means. Petitioner, in an attempt to show error, lists six points, on pages 7-10 of its petition, which purport to be the basis for the holding of non-infringement of those two patents. Those purported foundations as to why the Court below found no infringement are, according to petitioner:

1. "That the shock absorbers interconnected hydraulically by the cross tubes was the device that Huntman first installed upon a car" (Pet. 7).

2. "That these patents [1,971,957 and 1,971,958]\* disappear from the picture unless the claims therein support the granting of the two subsequent patents as part of the field preempted by the application for patent 1,971,957" (Pet. 8).

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\* Matter in brackets supplied unless otherwise noted.

3. That there is no infringement because the "claims monopolize for the patentee the entire field of the problem, and that to allow patentee now to claim every means for equalizing the strain on both sides of vehicles would allow him to extend his invention to include the prior art" (Pet. 8).

4. "That what the patentee really has offered is an hydraulically connected shock absorbing combination \* \* \*. This is tantamount to saying that the patentee must be limited to the specific exemplifications of his patent specifications \* \* \*" (Pet. 8-9).

5. "That the claims are so broad as to prevent future possible inventions" (Pet. 9).

6. "That the problem Huntman worked on was one common to motor car manufacturers which they were endeavoring to solve. As a ground for limiting the scope of claims this is in conflict with long established precedents" (Pet. 9).

Immediately following the above points, petitioner makes the statement:

"On *these grounds alone*\* the Circuit Court held these patents not infringed." (Pet. 10).

If the opinion of the Circuit Court of Appeals be examined it will be apparent that it was not on the above "grounds alone" which the first two patents in suit were held limited to hydraulic cross connections and so not infringed by the mechanical torque bars of defendant. The nub and basis for the holding of non-infringement is found at page 591 of the record and is as follows:

"Combining shock absorbers by means of a cross bar would we think have contributed nothing new to the art, neither in mechanism nor function. But hydraulically connecting the old shock absorbers did offer some novelty. To validate '957 therefore this hydraulic connecting limitation must be read into the claim."

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\* Italics supplied unless otherwise noted.

In view of this part of the opinion, and in view of the fact that the '958 patent is the same as the '957 one, except that it is for a method while the latter is for mechanical structure, there was no error of law or otherwise committed by the Court below, such as would warrant this Court allowing the petition.

Plaintiff's six points (Pet. 7-10), in view of the true ground of the decision relative to infringement of the first two patents, therefore amount to but moot questions.

Petitioner complains that the restriction of the broader claims of the first patent to the hydraulic pipes connecting the shock absorbers on either side is in error in view of its narrower claims and of certain cited cases in this Court (Pet. 21). Yet, in *Westinghouse Co. v. Formica Co.*, 266 U. S. 342, the Court held precisely that, being constrained thereto by the prior art and the absence of any disclosure except the specific one (as here), and notwithstanding the established estoppel to deny validity. It is only when the prior art does not constrain it that the Court will consider differences between broad and narrow claims.

**PETITIONER'S STATEMENTS OF THE REASONS THE  
COURT BELOW HELD PATENTS 1,971,959 AND 1,971,960  
INVALID**

On pages 10 and 11 of its brief petitioner lists three grounds upon which the Circuit Court of Appeals is alleged to have based its holding of invalidity of the last two patents, 1,971,959 and 1,971,960.

Petitioner's point is that it was error for the Court below to hold these patents invalid "Because they were not applied for until after respondent had announced the appearance of the accused structures" (Pet. 10). This holding is just an added ground of invalidity because the Court immediately before had held those two patents invalid on the prior art patent to Goyne (Rec. 592).

The second point of petitioner is that there is no basis in law for the Court to hold that these patents "cannot be sustained unless they are to be classed as further embodiments of patent 1,971,957" (Pet. 10). This statement demands an inference that is unwarranted by the opinion, for the following quotation from the opinion shows an entirely different meaning:

"The conclusion is that patents '959 and '960 cannot be treated as simply an embodiment of the invention claimed in '957, but must stand on their own feet. Upon the basis of that conclusion, the patents are open to attack on many grounds. One of them is anticipation". (Rec. 591).

The Court then went on to hold them anticipated by Goyne, a prior patent, which was too late to be a statutory bar to the first two patents, but was early enough to be such a bar to the last two, because it was granted more than two years prior thereto (Rec. 592).

In the third point, beginning at the bottom of page 10 of the petition and extending over to the top of the next page, petitioner complains that the Circuit Court found as a fact that Goyne anticipated the last two patents when that was not a fact and when the "District Court did not find this patent to be an anticipation" (Pet. 11).

The findings of the District Court (Rec. 284-8) are silent with respect to the prior art with the exception that patent '959 "is not anticipated and is a novel invention" (Rec. 285)—clearly a conclusion—and likewise as to patent '960 (Rec. 285-6). Since the District Court had made no finding, the Circuit Court was fully justified in making its own, especially when the finding covered only the interpretation of writings, and the testimony of Hunt for respondent about them was unchallenged. If, in patent actions, the ultimate questions of validity and infringement are not open to review in the appellate court there would be little need for appeals.

## THE ALLEGED VIOLATION OF RULE 52(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE

In numerous places in the petition and supporting brief are found criticisms of the Circuit Court because allegedly it did not follow the findings of fact of the District Court, and so gave no effect to Rule 52(a) of the Federal Rules of Civil Procedure. In only a few places is anything of a specific nature mentioned. These will be dealt with *seriatim*.

On page 7, petitioner says that the Circuit Court held

“That the shock absorbers interconnected hydraulically by the cross tubes was the device that Huntman *first installed upon a car*” (Rec. 589).

Then petitioner goes on to state:

“This is directly contrary to the finding of the District Court based on undisputed evidence taken in open court that Huntman first installed the cross bar connection early in 1923.”

Substantially the same statements are made in the supporting brief (Pet. bottom 16 and top 17).

The District Court made no finding as to when Huntman *installed* a cross bar connection if ever. What the District Court did find was that “\* \* \* *Huntman, had in the Spring of 1923 experimented* also with another form thereof consisting of a bar which was attached to the shock absorbers on the respective sides” (Finding 4, Rec. 285).

In view of that finding and in view of the fact that there was no documentary corroboration for Huntman’s oral—and highly interested—testimony, the Circuit Court was free to ignore Huntman’s unsupported testimony that he had installed a mechanical cross connection and it could make its own finding with respect to the fact that it was the hydraulic

“\* \* \* device that Huntman first installed upon a car.” (Rec. 589).



On page 8 of the petition, are the statements:

“The District Court found that the claims of patents 1,971,957 and 1,971,958 do not include this indirect effect of the ‘Adex’ linkage. The Circuit Court has shown no error in this finding.”

Later, on page 16 of the brief in support of the petition, it is stated:

“The District Court found that the action of this linkage [Adex] was indirect and was not a physical connection of the shock absorbers and, therefore, outside the scope of the broad claims (Record p. 287). In *its* judgments the Circuit Court ignored this evidence and the findings of fact of the District Court based thereon.” (*Italics in original*)

Petitioner is in error in these statements because the District Court made no finding at page 287 cited with respect to “Adex”, or elsewhere, or with respect to any structure like it (Rec. 284-8).

In its *opinion*, at page 281, the District Court simply said, of Adex, that “the use of such a bar” [the rod to establish lateral stability in automobiles on curves] “where there were also shock absorbers,” appeared prior to Huntman”. This goes far toward establishing the direct opposite of what our adversaries say, and is not affected by the District Court’s further comment that there was “no direct functional relationship between the shock absorbers upon the respective sides” (Rec. 281-2)—whatever that may mean.

Petitioner complains that the Circuit Court held that patents 1,971,959 and 1,971,960 are anticipated by Goyne 1,568,561 (Pet. 10) when

“The District Court did not find this patent to be an anticipation” (Pet. 11).

It is true that Goyne was held by the Court of Appeals to be anticipatory of the last two patents in suit, and that the District Court did not mention it specifically. But that

does not obscure the fact that Goyne is a plain anticipation of the patents, just as the Circuit Court says.

The whole matter comes to this: it was stated by both Courts that Ezell in the prior art had the equalizer bar which connected the springs on opposite sides of the car, which closely resembled Huntman's bar devices (Rec. 278; 586, bottom).

What distinguished the findings of the two Courts was, that the Circuit Court found that the addition of shock absorbers—old in the art as the plaintiff admits (pat. 1,971,957, p. 1, lines 15-20 following p. 56a of the Record)—only made differences due to the presence of the shock absorbers and “not to plaintiff's claimed combination” (Rec. 587). In other words, that there was nothing but aggregation attained by the addition to Ezell's old cross bar of the old shock absorbers.

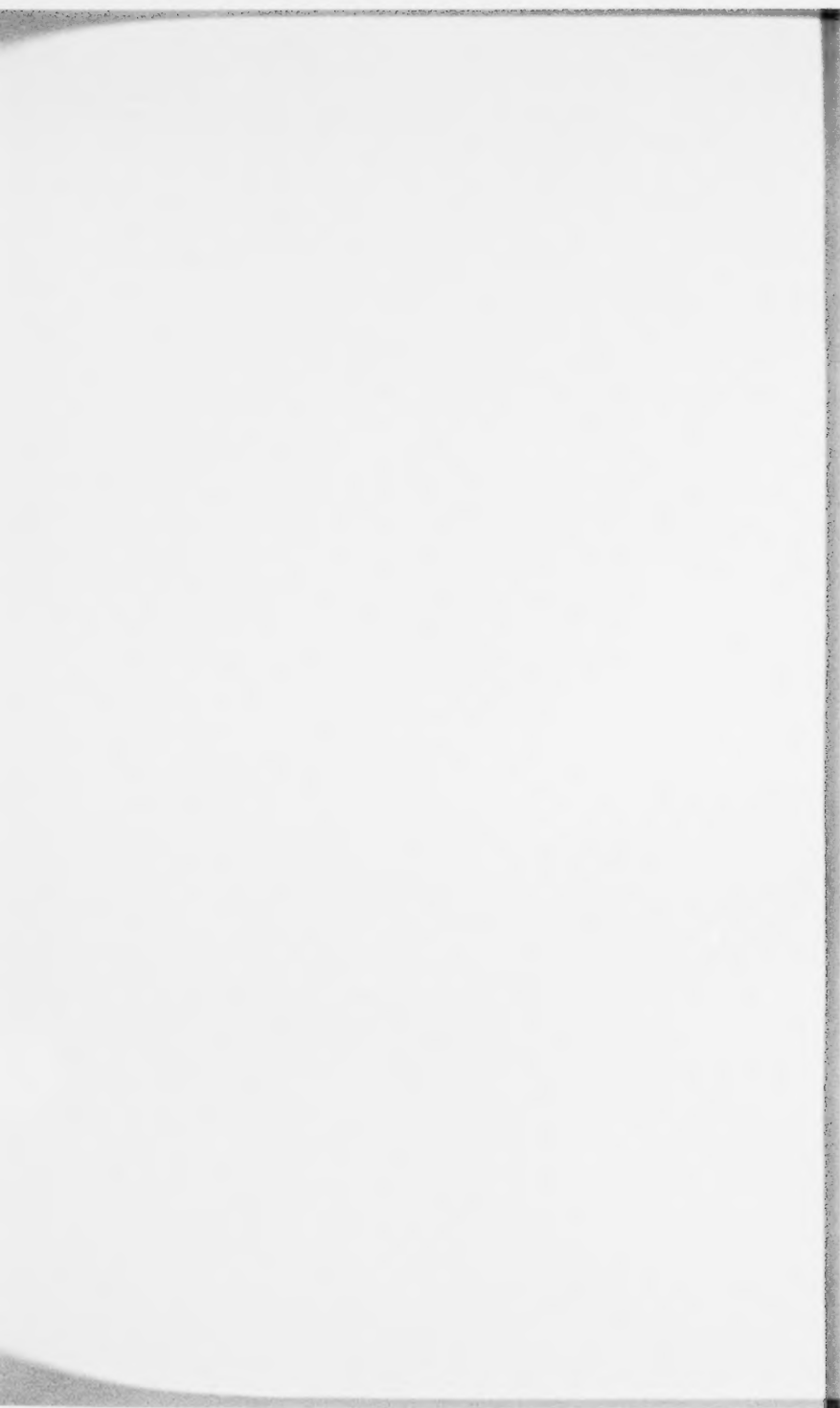
The District Court's opinion plainly shows that prior to Huntman the use of an equalizer bar to transmit motion from the springs on one side of a vehicle to those on the other was old; also that shock absorbers were old (Rec. 171a). The Circuit Court found that “the plaintiff does not claim to be the inventor either of the shock absorbers or the connecting means” (Rec. 586, near bottom).

This, on the face of the patents, left nothing in the four patents in suit except the use of tubes, or hydraulic connections between the shock absorbers, which was the specific disclosure of the first two patents in suit, and which was not used by defendant. Consequently there is no error where, as here, the findings of the Circuit Court are amply supported by the evidence and are not in conflict with those of the District Court.

### Conclusion

It is submitted that the petition should be denied.

DRURY W. COOPER,  
DRURY W. COOPER, JR.,  
*Counsel for Respondent.*





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IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1944

Nos. 638 AND 639

HUNTMAN STABILIZER CORPORATION,

Petitioner,

*v.*

GENERAL MOTORS CORPORATION,

Respondent.

**REPLY BRIEF FOR PETITIONER**

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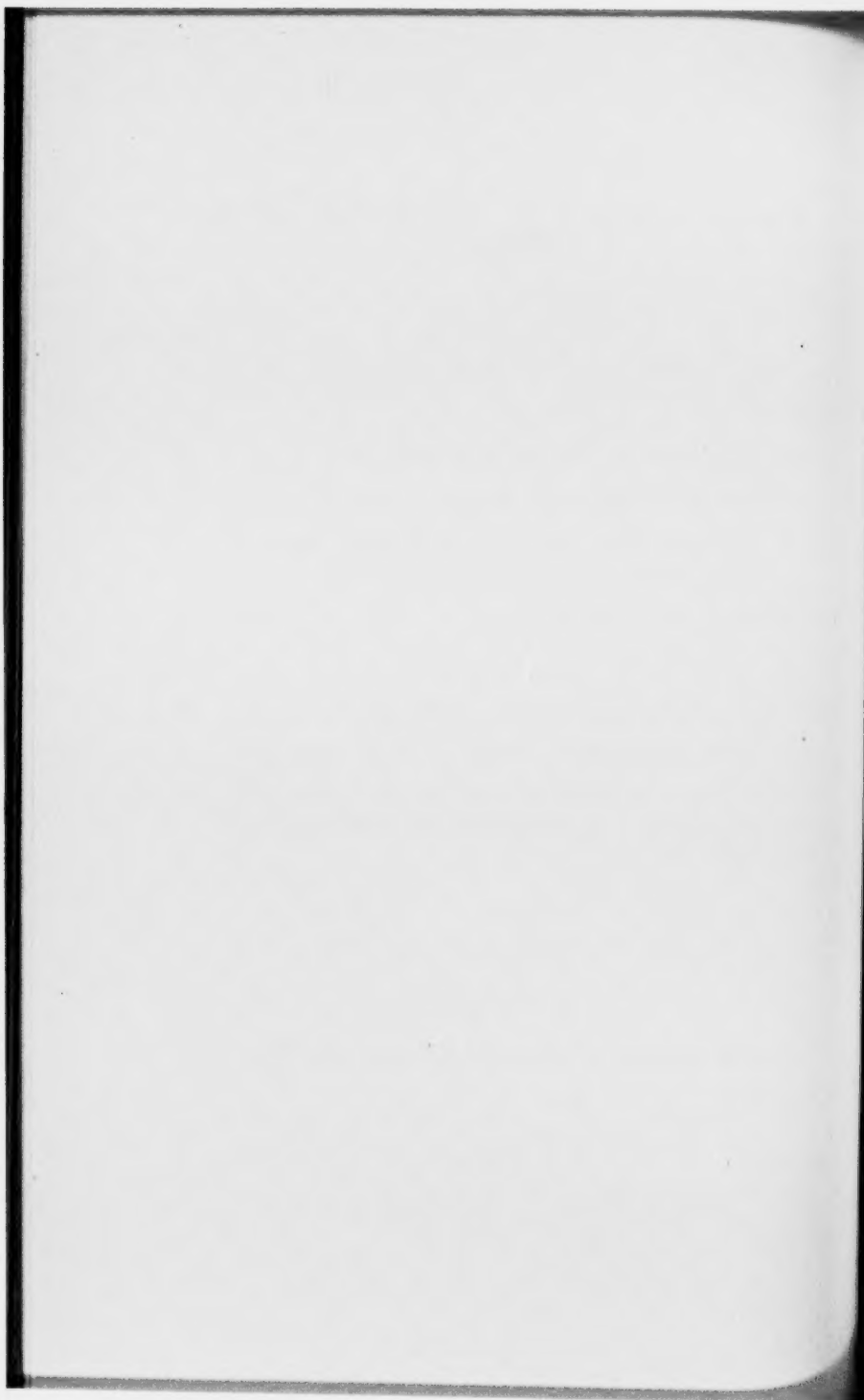
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1944

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Nos. 638 AND 639

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HUNTMAN STABILIZER CORPORATION,

Petitioner,

v.

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**REPLY BRIEF FOR PETITIONER**  
**Correction of Respondent's "Statement"**

By January 22, 1934, Petitioner knew the construction used in Respondent's cars at that time but the "Chevrolet" construction was not used until 1938 (Rec. 324, 325).

**ARGUMENT**

**Scope of Patents 1,971,957 and 1,971,958**

Respondent does not point out any error in the six points raised in Petitioner's brief but contends that the judgment is not based on these points *alone* and that they relate therefore to "moot" questions. This contention ignores the fact that these points are given in the Circuit

Court's opinion as grounds for its judgment and, unless corrected, would stand as precedents.

Respondent contends that the basis for the holding of non-infringement is the statement "Combining shock absorbers by means of a cross bar would we think have contributed nothing new to the art, neither in mechanism nor function." But this statement standing alone is not a sufficient or adequate ground for reversing the District Court's judgment. For it is not supported by any evidence nor is any basis in evidence given for it by the Circuit Court. There is no instance in the prior art of shock absorbers connected by a cross bar or other means. If there were, the Circuit Court could have pointed to it as an anticipation not only of the broad claims of patents 1,971,957 and 1,971,958, but also of patents 1,971,959 and 1,971,960 and need not have relied for this purpose on the later patent to Goyne.

In this statement the Circuit Court has, without any showing of error in the findings of the District Court, failed to give proper effect to the facts found by the District Court.

The statement is directly contradictory to the express findings of fact of the District Court that patents 1,971,957 and 1,971,958 are not limited to the particular cross tube connection illustrated in the patent; are not anticipated and are novel combinations (Findings 2 and 3, Rec. 284), that the mechanical connection between shock absorbers of the snubber type to accomplish the same results as those of patents 1,971,957 and 1,971,958, is not anticipated and is a novel invention (Finding 5, Rec. 285), and that the direct connection between recoil check shock absorbers on opposite sides of a vehicle by a practically incompressible fluid is functionally comparable to a physical connection thereof by a bar (Finding 6, Rec. 285).

Respondent's brief (p. 8) also contends that the Circuit Court found Petitioner's patents to be for "nothing but

aggregation''. There is no basis for this contention. The Circuit Court made no *finding* of aggregation. Its finding is just the contrary for it did not hold these patents invalid but limited to a hydraulic connection. If the combination of recoil check shock absorbers and hydraulic connections is not an aggregation, the same combination of shock absorbers and a cross bar connection could not be, for "in a patentable combination of old elements, all the constituents must so enter into it that each qualifies every other", *Pickering v. McCullough*, 104 U. S. 310, 318. If the hydraulic connections satisfy this requirement, and the Circuit Court's judgment assumes it does, then the cross bar connection satisfies it equally for they both function as connections. The evidence admittedly shows both connections to involve the same principle (Rec. 48) and the District Court so found (Finding 6, Rec. 285).

### **Validity of Patents 1,971,959 and 1,971,960**

One of the errors of the Circuit Court's judgment as to these patents is that they "cannot be sustained unless they are to be classed as further embodiments of patent 1,971,957". Respondent asserts that this statement demands an inference that is unwarranted by the opinion. But the court's language is clear. Though the mental concept is embodied or realized in a mechanism or a physical or chemical aggregate, the embodiment is not the invention and is not the subject of a patent. This distinction between the idea and its application in practice is the basis of the rule that employment merely to design or to construct or to devise methods of manufacture is not the same as employment to invent. *United States v. Dubilier Condenser Corp.*, 289 U. S. 178, 188. And "although an idea of means not yet reduced to practice is not an invention, still it is the idea, and not the practical embodiment, which constitutes the essence of the invention and to which the protection of the patent is awarded. If an idea is capable

of tangible expression under different forms, the difference in these forms is merely formal, not substantial; and the concrete inventions, however varied in appearance, or arrangement, or capacity, are nevertheless identical". Robinson on Patents, Vol. 1, pages 186, 187, Sec. 130.

Giving the word "embodiment" its usual and accepted meaning the statement pointed out by Petitioner as error needs no inference and is not changed by the further statement quoted by Respondent. These statements are in error as to law and are directly contrary to evidence conceded by Respondent (Rec. 48) and to the findings of fact of the District Court (Findings 4 and 6, Rec. 285).

The District Court's findings of fact were that patents 1,971,959 and 1,971,960 were novel inventions and were not anticipated (Findings 5 and 8, Rec. 285, 286). The Goyne patent was among the prior art before the District Court and is covered by these findings as is all of the other art. Goyne showed merely the idea of connecting two leaf springs. The conclusion of the Circuit Court is based purely upon a speculation that Goyne would anticipate if he had similarly connected two shock absorbers. To constitute an anticipation it is not enough that "there appears to be in the mechanism described [in the prior art] a possibility of its having been with some alterations adaptable to the process thereafter discovered", *Carnegie Steel Co. v. Cambria Iron Co.*, 185 U. S. 403, 421, 422. The holding of the Circuit Court of anticipation by the patent to Goyne is no stronger than the other grounds.

As to the holding of invalidity because these patents "were not applied for until after respondent had announced the appearance of the accused structure" (although within the two year statutory period), respondent contends that this is just an *added* ground of invalidity. But it does stand as a statement of law and a precedent for future decisions although it is without basis in the statutes or in any decision of this court.

Respondent argues that "If, in patent actions, the ultimate questions of validity and infringement are not open to review in the appellate court there would be little need for appeals". The true function of the Appellate Court is to review the judgment of the District Court to correct errors if any appear therein. If the findings and conclusions of the District Court may be merely ignored by the Circuit Court as was done in this case and the judgment of the District Court reversed without any showing of error therein there would be no need of a judgment of the District Court (Rule 52a Rules of Civil Procedure).

### **Violation of Rule 52(a) of the Federal Rules of Civil Procedure**

Respondent argues that the District Court's finding that "Huntman had in the Spring of 1923 experimented also with another form thereof consisting of a bar which was attached to the shock absorbers on the respective sides" was not a finding as to when Huntman *installed* a cross bar connection. But the District Court's finding that the cross bar was attached to the shock absorbers on the respective sides was a finding that it was installed in the Spring of 1923. Respondent does not point out what it considers should be done after the bar was attached to complete the installation.

Respondent is in error in stating that Huntman's testimony was uncorroborated. It was corroborated by the testimony of Hughes (Rec. 509-512) and Lepien (Rec. 513-521) and Exhibits P-22 to P-26 (Rec. 574-581).

### **Conclusion**

It is submitted that none of the erroneous conclusions of law advanced by the court below can be ignored as "moot" questions whether there be other conclusions also "moot" or not; that if these erroneous conclusions are to be dis-

missed as "moot" there is no other adequate basis for the judgments of the court below and that unless these erroneous conclusions are corrected by this court they will stand as precedents.

It is also submitted that the court below in ignoring the findings and conclusions of the District Court without pointing to any error has so far departed from the usual and accepted course of judicial procedure and from the "Rules of Civil Procedure" as to call for an exercise of this court's power of supervision.

Petitioner respectfully submits therefore that this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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